

REMARKS

Claims 95-97, 99-103, 125-134, 136-149, 184-188 and 195 are currently pending. Claims 104-123 have been withdrawn. Claims 1-94, 98, 135, 150-183, 189-194 and 196-200 have been canceled. Claims 95, 103, 125, 184 and 195 have been amended.

Claims 95, 184, and 195 have been amended to recite that each cell of the formed stent consists essentially of two loops of a first, lower frequency loop containing section or circumferential band and three loops of the second, higher frequency loop containing section or circumferential band, each said loop opening toward the inside of the cell. Claim 125 has been amended to recite that each cell consists essentially of five loops, formed by ten separate substantially linear members as described therein, each said loop opening toward the inside of the cell. Support for these amendments is found throughout the specification, including specifically page 12, lines 6-11, and Figure 3.

No new matter is introduced by these amendments and the amendments are supported by the instant specification.

Response to Objection under 35 U.S.C. §132(a)

The Examiner has objected to an amendment filed on June 26, 2007 under 35 U.S.C. §132(a). Specifically, the Examiner argued that "it is not clear if the limitation in claims 139, 146, 149 [and] 154 . . . are supported by the original disclosure." Applicant respectfully disagrees with and traverses the rejection.

As a preliminary matter, applicant believes that the Examiner has mistakenly referred to claim amendments filed on June 26, 2007. Claims 139, 146, 149 and 154 were added by preliminary amendment with the filing of the application on July 14, 2003. Further, claim 154 was canceled in the Amendment filed on December 16, 2008. Regarding claims 139, 146 and 149, these claims recite variations in flexibility and resistance to radial compression amongst the ten members that together form a cell of the stent recited by independent claim 125. Variations in flexibility and resistance to radial compression are supported throughout the original disclosure, including specifically page 15, lines 16-24 as follows:

Preferably, the first, second, third, and fourth members 501, 504, 507, 510 have a width that is greater than the width of the fifth, sixth, seventh, eighth, ninth, and tenth members 513, 516, 519, 522, 525, 528 in that cell. The differing widths of the first, second, third, and fourth members and the fifth, sixth, seventh, eighth, ninth, and tenth members with respect to each other contribute to the overall flexibility and resistance to radial compression of the cell. The widths of the various members can be tailored for specific applications.

(Emphasis added.) Thus, the original disclosure supports first through tenth members having variations in their relative flexibility and resistance to radial compression of the cell, which as disclosed is the result of the differing widths amongst the members.

While the specification describes one preferred embodiment in which the first, second, third and fourth members are greater in width than the fifth, sixth, seventh, eighth, ninth and tenth members, the specification further discloses other variations in width amongst the ten members. Insofar as the first through tenth members generally may be of "differing widths" as "tailored for specific applications", the ten members recited by

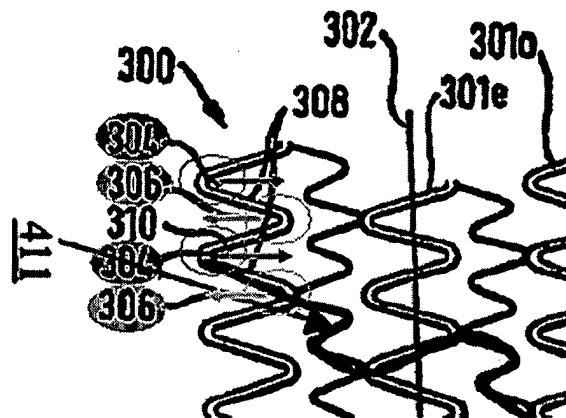
independent claim 125 may therefore be of differing flexibility and radial compression, as further recited by dependent claims 139, 146 and 149.

Reconsideration and withdrawal of the objection under 35 U.S.C. §132(a) as to the present claims 139, 146 and 149 is respectfully requested for the above reasons.

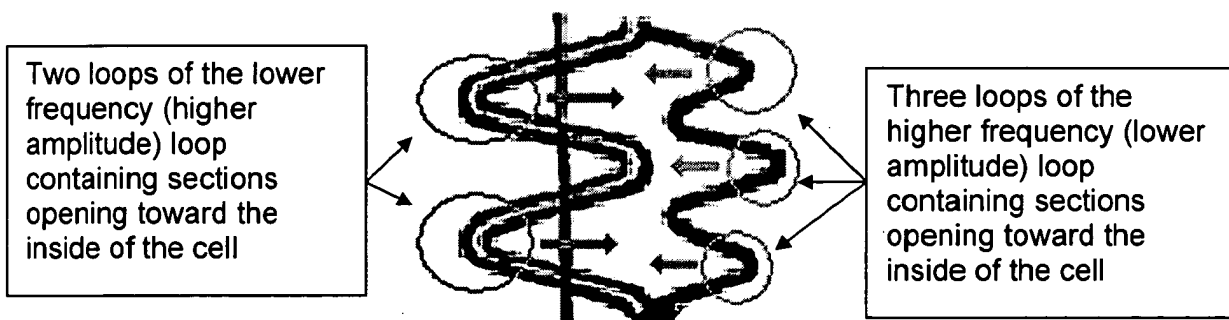
Response to Rejection Under 35 U.S.C. §102(e) Based on Brown

Claims 95-97, 99-103, 125-138, 140-145, 147-148 and 184-188 have been rejected under 35 U.S.C. §102(e) as anticipated by U.S. 7,204,848 (Brown). Applicant respectfully disagrees with and traverses this rejection.

Independent claims 95 and 184 describe triangular cells comprising first, second and third loop containing sections of varying frequencies and amplitudes, respectively. Further, each triangular cell is formed of two loops of a lower frequency loop containing section and three loops of a higher frequency loop containing section (as recited in claim 95), or alternatively of two loops of a higher amplitude loop containing section and three loops of a lower amplitude loop containing section (as recited in claim 184), said loops in both instances opening toward the inside of the cell. The direction of a loop's opening is understood with reference to page 12, lines 6-11 of the present specification, which describes "left opening loop 306" and "right opening loop 304" of Figure 3, illustrated as follows:

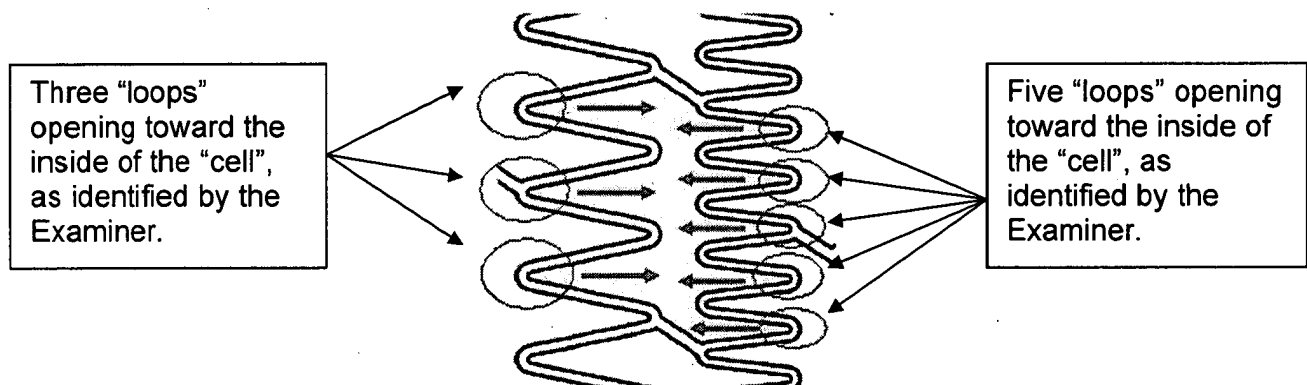


The "right opening loop[s] 304" open toward the inside of the cell (see red arrows above), whereas the "left opening loop[s] 306" open toward the outside of the cell (see green arrows above). Thus, as recited by claims 95 and 184, a triangular cell having two loops of the lower frequency / higher amplitude loop containing sections and three loops of the higher frequency / lower amplitude loop containing sections is illustrated by Figure 3 as follows:



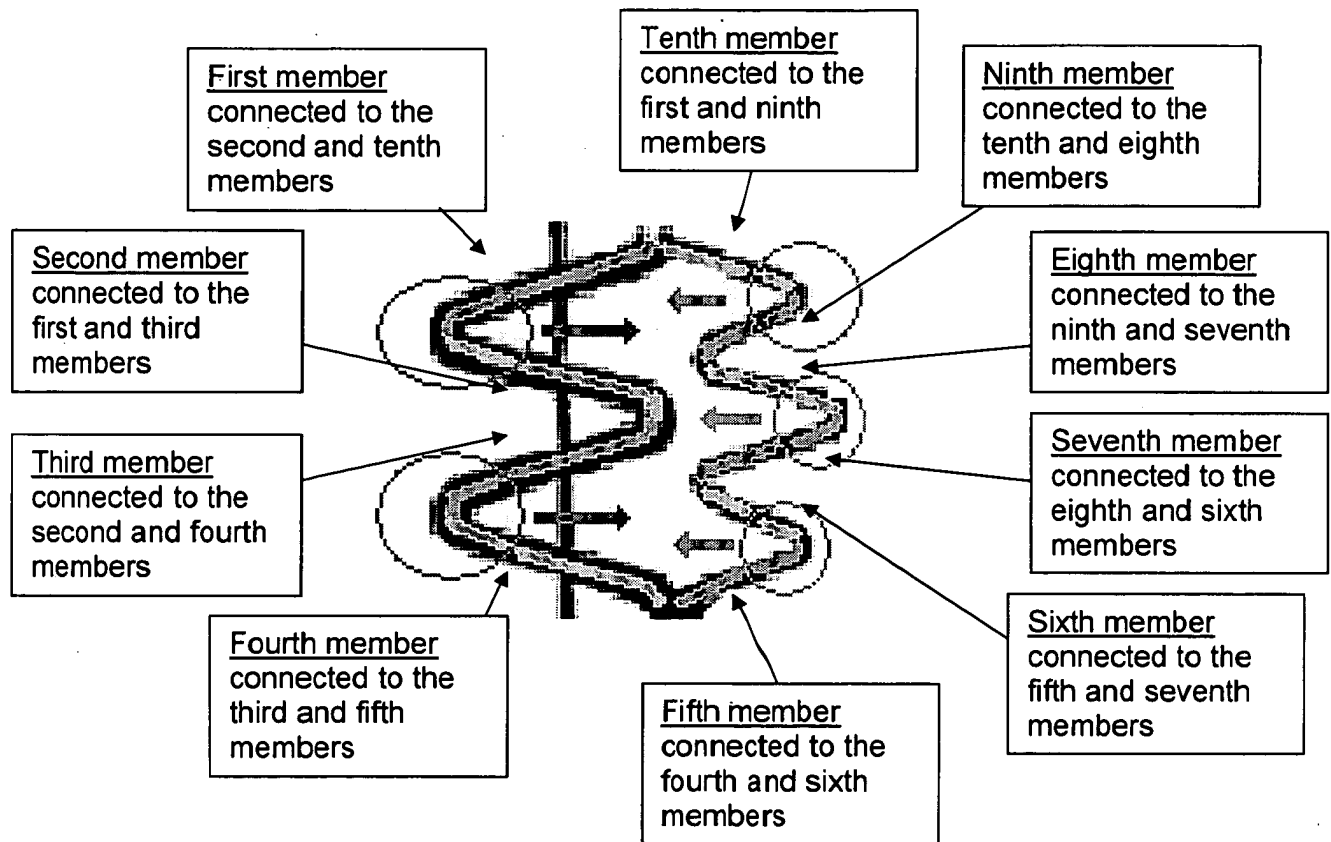
The transitional phrase "consisting essentially of" limits the scope of a claim to the specified elements "and those that do not *materially* affect the basic and novel characteristic(s)" of the claimed invention. *In re Herz*, 537 F.2d 549, 551-52, 190 USPQ 461, 463 (CCPA 1976) (emphasis in original); see also MPEP §2111.03.

By contrast to independent claims 95 and 184, Brown describes a stent formed by first and second “band-like elements” that are “interconnected via a plurality of interconnecting elements”. (Brown, 5:36-63.) The alleged “cell” as identified by the Examiner in Brown does not consist essentially of triangular cells formed of loop containing sections having two loops of a first low frequency (or high amplitude) loop containing sections and three loops of second high frequency (or low amplitude) loop containing sections. Rather, the “cells” taught by Brown have a varying number of loops opening toward the inside of the cell, ranging from a total of six to eight or more, as shown below in Figure 2 cited by the Examiner:

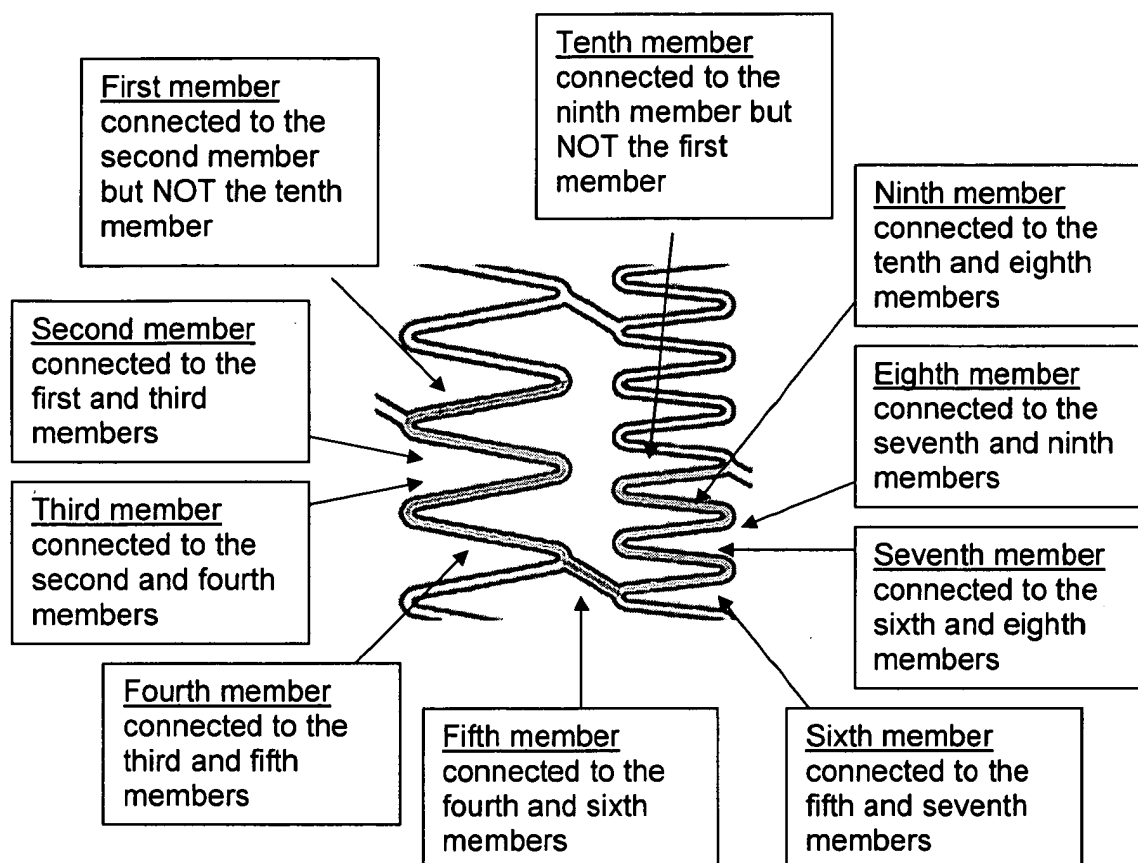


Thus, because Brown does not teach or suggest a stent consisting essentially of cells having the structure as recited by independent claims 95 and 184, Brown cannot anticipate claims 95-103 or 184-188.

Similarly, independent claim 125 recites a stent consisting essentially of triangular cells wherein each cell has ten substantially linear members connected one to the other as described therein. The proper arrangement of the ten substantially linear members is illustrated by Figure 3 as follows:



As noted, Brown describes a stent formed by first and second "band-like elements" that are "interconnected via a plurality of interconnecting elements". (Brown, 5:36-63.) The alleged "cells" taught by Brown clearly do not have ten substantially linear members connected one to the other as described by present claim 125, as shown below in Figure 2 cited by the Examiner:



Thus, because Brown does not teach or suggest a stent consisting essentially of cells having ten substantially linear members connected one to the other as recited by claim 125, Brown cannot anticipate claims 125-135 or 136-149.

Reconsideration and withdrawal of the rejections under 35 U.S.C. §102(e) as to the present claims 95-103, 125-134, 136-149 and 184-188 are respectfully requested for the above reasons.

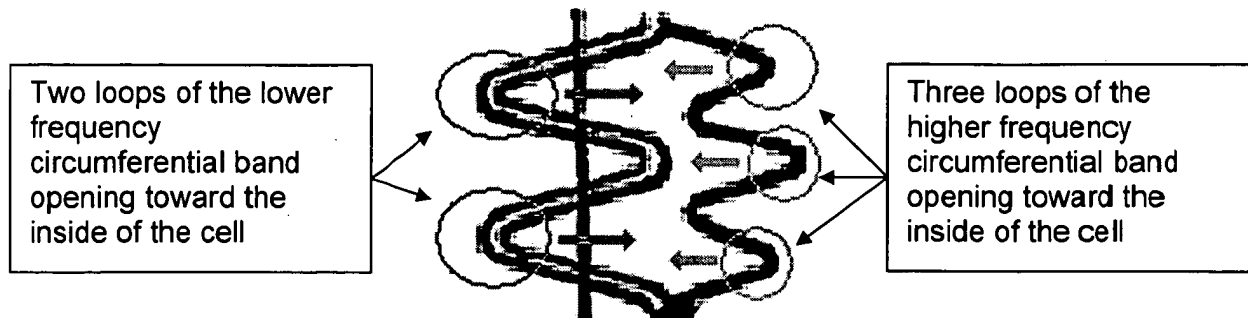
Response to Rejection Under 35 U.S.C. §102(e) Based on Jayaraman

Claim 195 has been rejected under 35 U.S.C. §102(e) as anticipated by U.S. 6,162,245 (Jayaraman). Applicant respectfully disagrees with and traverses this rejection.

Claim 195 recites a stent comprising first circumferential bands having loops at a first frequency alternating with second circumferential bands having loops at a second frequency higher than the first, with no intervening material between first and second bands. The first and second bands are coupled to form cells, each cell having two loops of the first circumferential band and three loops of the second circumferential band, said loops opening toward the inside of the cell. The recitation of a specific number of elements in a claim limits the scope of the claim to embodiments having the specified number of that particular element. *See Moleculon Research Corp. v. CBS, Inc.*, 793 F.2d 1261, 1271 (Fed. Cir. 1986) (transitional phrase, "which comprises," between preamble and body of claim did not expand structural recitation in cube puzzle claim, "eight cube pieces," to include step which engaged more than eight cube pieces), *abrogated on other grounds by Egyptian Goddess, Inc. v. Swisa, Inc.*, 543 F.3d 665 (Fed. Cir. 2008) (en banc); *KCJ Corp. v. Kinetic Concepts, Inc.*, 223 F.3d 1351, 1356 (Fed. Cir. 2000) (open-ended claims containing the transitional phrase "comprising" generally not limited to a specific number of a particular element "[u]nless the claim is specific as to the number of elements").

A cell as recited by claim 195, having two loops of a first circumferential band of a lower frequency and three loops of a second circumferential band of a higher

frequency, said loops opening toward the inside of the cell, is illustrated by Figure 3 as follows:



By contrast, Jayaraman does not teach or suggest a stent having cells made up of two loops of a first circumferential band and three loops of an adjacent second circumferential band, said loops opening toward the inside of the cell. Rather, as cited by the Examiner, Figure 30 of Jayaraman discloses a stent-graft formed by the combining of "star-shaped members" with "links" that "link each [star-shaped] member together". (Jayaraman, 5:11-15.) The configuration thus disclosed by Jayaraman, as shown below in Figure 30, can at best be described as forming structures having a 1:2 ratio between the "loop" of the "star-shaped member" and the two "loops" of the adjacent "links":

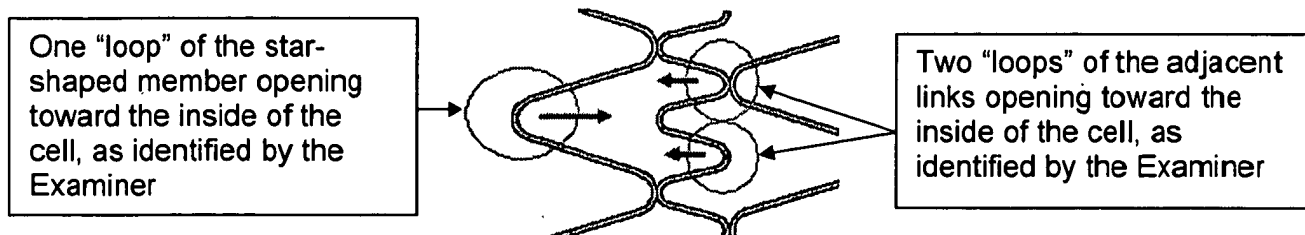


Figure 28, also cited by the Examiner, shows the same configuration. Because Jayaraman does not teach or suggest a cell formed of two loops of a first loop containing section or circumferential band and three loops of a second loop containing section or circumferential band, Jayaraman cannot anticipate claim 195.

Reconsideration and withdrawal of the rejections under 35 U.S.C. §102(e) as to the present claim 195 is respectfully requested for the above reasons.

Response to Rejection Under 35 U.S.C. §103(a) Based on Brown

Claims 129-132 and 138-149 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Brown in view of U.S. 5,807,404 (Richter). Applicant respectfully disagrees with and traverses this rejection. As stated above, Brown does not teach or suggest a stent consisting essentially of cells having ten substantially linear members connected one to the other as recited by independent claim 125 upon which claims 129-132 and 138-149 depend. Richter does not remedy this deficiency because Richter also does not teach or suggest a stent consisting essentially of cells having ten substantially linear members connected one to the other as recited by independent claim 125. Therefore, Brown in view of Richter does not render claims 129-132 and 138-149 obvious.

Reconsideration and withdrawal of the rejections under 35 U.S.C. §103(a), as to the present claims 50-51 are respectfully requested for the above reasons.

CONCLUSION

Based on the foregoing amendments and remarks, applicant respectfully requests reconsideration and withdrawal of the rejections of the pending claims and requests allowance of this application.

AUTHORIZATION

The Commissioner is hereby authorized to charge any additional fees which may be required for consideration of this Amendment to Deposit Account No. 50-4387, Order No. 92077.003.

In the event that an extension of time is required, or which may be required in addition to that requested in a petition for an extension of time, the Commissioner is requested to grant a petition for that extension of time which is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to Deposit Account No. 50-4387, Order No. 92077.003.

Respectfully submitted,
Cadwalader, Wickersham & Taft LLP

Dated: 07/29/2009

By: 
Karen J. Axt
Registration No. 63483

Address:
Cadwalader, Wickersham & Taft LLP
One World Financial Center
New York, NY 10281
(212) 504-6000 Telephone
(212) 504-6666 Facsimile